IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-6-2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.Nos.36731 and 43626 of 2006
and M.P.Nos.1 and 2 of 2006 and
5 of 2007 in W.P.No.36731 of 2006 and
M.P.Nos.2 and 3 of 2006 in W.P.No.43626 of 2006

M.Gnanasekar .. Petitioner in W.P.No.36731 of 2006

1. M.Ramesh
2. S.Valarmala
3. V.Sivapatham
4. S.Sankar .. Petitioners in W.P.No.43626 of 2006

vs.

1. State of Tamil Nadu,
   Represented by
   Chief Secretary to Government,
   Government of Tamil Nadu,
   Fort St.George,
   Chennai-600 009.

2. The Secretary,
   Tamil Nadu Public Service Commission,
   Chennai-600 002.

3. Tamil Nadu Government
   Temporary Junior Asst./Assistants Union
   (Tamil Nadu Tarkaliga Elanilai Udaviyalar
   Matrum Udaviyalar Sangam), rep. by its
   State President,
   62, Big Street, Triplicane,
   Chennai-600 005.

4. Tamil Nadu Government Employees Union,
   Rep. by its President K.Balasubramanian,
   62, Big Street, Triplicane, Chennai-5.

5. Tamil Nadu Government Employees' Association,
   (Regd. No.234/84) Rep. by its General Secretary,
   No.46, Theradi Theru, Triplicane, Chennai-600 005.

6. A.Dhanakodi
7. K.Rajaraman
8. R.Kannathasan

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9. D.Naikeran
10. S.V.G.Senthilvel
11. K.Kumar
12. T.N.Junior Asst. Organisation
rep. by its District President
T.Elamparuthi, S/o M.Thirupathi,
22, Vanjinathan Nagar,
Thanthonimalai, Karur-5.

(Respondents 3 and 4 impleaded as per
Order dated 6.6.2007 in M.P.Nos.1 of 2007
and 3 of 2006 in W.P.No.36731 of 2006)

(Respondents 5 to 11 impleaded as per
Order dated 7.6.2007 in M.P.Nos.2 and 3 of 2007
in W.P.No.36731 of 2006)

(Respondent-12 impleaded as per Order
of Court dated 9.6.2007 in M.P.No.4 of 2007
in W.P.No.36731 of 2006)

.. Respondents in W.P.No.36731 of 2006

1. The Government of Tamilnadu,
represented by its Chief Secretary,
Public and Administrative Department,
Fort St.George,
Chennai-600 009.

2. Tamil Nadu Government
Temporary Junior Asst./Assistants Union
(Tamil Nadu Tarkaliga Elanilai Udaviyalar
Matrum Udaviyalar Sangam), rep. by its
State President,
62, Big Street, Triplicane,
Chennai-600 005.

3. Tamil Nadu Government Employees Union,
Rep. by its President K.Balasubramanian,
62, Big Street, Triplicane, Chennai-5.

4. Tamil Nadu Government Employees' Association,
(Regd. No.234/84) Rep. by its General Secretary,
No.46, Theradi Theru, Triplicane, Chennai-600 005.

5. A.Dhanakodi
6. K.Rajaraman
7. R.Kannathasan
8. D.Naikeran
9. S.V.G.Senthilvel
10. K.Kumar

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(Respondents 2 to 10 impleaded as per
Order dated 8.6.2007 in W.P.No.43626 of 2006)
(same as in M.P.Nos.1 of 2007 and 3 of 2006 in
W.P.No.36731 of 2006 and M.P.Nos.2 and 3 of 2007
in W.P.No.36731 of 2006)

.. Respondents in W.P.No.43626 of 2006

Writ Petition No.36731 of 2006 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, after calling for the concerned records relating to the G.O.Ms.No.155, Personnel and Administrative Reforms (P) Department, dated 19.9.2006 passed by the first respondent and quash the same.

Writ Petition No.43626 of 2006 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified mandamus, calling for the records on the file of the respondent pertaining to the impugned G.O.Ms.No.155, Personnel and Administrative Reforms Department, dated 19.9.2006 and quash the same and consequently direct the respondent to take immediate action or cause initiation of action to fill up all the vacancies accrued in all the posts under the State or other authorities including the vacancies occupied by the temporary appointees, appointed de-hors the relevant statutory rules, by regular appointees immediately either through the TNPSC or through other recruitment agencies by conducting open competition giving equal opportunities to all the qualified citizens.

For petitioner in W.P.No.36731 of 2006:
Mr.Gnanasekar-Party-in-person

For petitioner in W.P.No.43626 of 2006:
Mr.N.Subramaniyan

For respondents 1 and 2 in W.P.No.36731 of 2006
and respondent-1 in W.P.No.43626 of 2006:
Mr.M.Dhandapani, Spl.G.P.

For respondent-3 in W.P.No.36731 of 2006 and
respondent-2 in W.P.No.43626 of 2006:
Mr.N.G.R.Prasad for M/s.Row & Reddy

For respondent-4 in W.P.No.36731 of 2006
and respondent-3 in W.P.No.43626 of 2006:
Mr.Ajay Ghose for Mr.Hariparanthaman

For respondent-5 in W.P.No.36731 of 2006
and respondent-4 in W.P.No.43626 of 2006:
Ms.Vaigai

For respondents 6 to 11 in W.P.No.36731 of 2006
and respondents 5 to 10 in W.P.No.43626 of 2006:
Mr.S.Ayyathurai

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For respondent-12 in W.P.No.36731 of 2006:
Mr.A.R.Thiruneelakandan

ORDER

F.M.IBRAHIM KALIFULLA,J.

In both these Writ Petitions, the challenge is to G.O.Ms.No.155, Personnel and Administrative Reforms (P) Department, dated 19.9.2006, passed by the State of Tamil Nadu. By the impugned G.O., the State Government has decided to conduct a Special Competitive Examination in Group-IV standard through the Tamil Nadu Public Service Commission (hereinafter referred to as 'the TNPSC') so as to absorb temporary Assistants/Junior Assistants in Secretariat and various Departments in the Districts who are on contract basis in the Tamil Nadu Ministerial Service/Tamil Nadu Judicial Ministerial Service. In the light of the said decision, the State Government requested the TNPSC to conduct necessary Special Competitive Examination in Group-IV for those persons.

2. W.P.No.36731 of 2006 has been filed as a Public Interest Litigation (hereinafter referred to as 'the PIL') by an individual who is a member of the Bar, while W.P.No.43626 of 2006 has been filed by four unemployed graduates who while seeking for quashing of the impugned G.O., also seek for a consequential direction to the State Government to fill up all the vacancies accrued in all the posts under the State or other authorities including the vacancies occupied by the temporary appointees by regular appointment through the TNPSC or any other recruiting agency by conducting an open competition giving equal opportunities to all the qualified citizens. Though the said W.P.No.43626 of 2006 was filed by those four individuals independently, since the former case (W.P.No.36731 of 2006) was entertained as a PIL, W.P.No.43626 of 2006 was tagged on and posted together for disposal.

3. At the outset, we wish to state that the Writ Petition preferred by the petitioner in W.P.No.36731 of 2006 cannot be entertained, inasmuch as it is by now well settled that a PIL cannot be entertained in respect of service matters, as has been categorically held by the Supreme Court in the decisions reported in 1998 (7) SCC 273 (Dr.Duryodhan Sahu vs. Jitendra Kumar Mishra) and 2005 (1) SCC 590 (Dattaraj Nathuji Thaware vs. State of Maharashtra). The Supreme Court in the latter decision (2005 (1) SCC 590) has stated the legal position as under in paragraph 16:

> "16. .... Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, the Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilised for disposal of genuine cases. Though in Duryodhan Sahu (Dr.) v. Jitendra Kumar Mishra (1998 (7) SCC 273 : 1998 SCC (L & S) 1802 : AIR 1999 SC 114) this Court held that

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> in service matters, PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. ...."

Again in paragraph 20 in 2005 (1) SCC 590, the Supreme Court has expressed its displeasure in the members of the Bar in either aiding or abetting filing of the frivolous petitions carrying the attractive brand-name of "Public Interest Litigation".

4. In the light of the said categoric pronouncement of the Supreme Court, it will have to be held that W.P.No.36731 of 2006 cannot be entertained at all as a PIL challenging the impugned Government Order. Since the other Writ Petition in W.P.No.43626 of 2006 preferred by unemployed graduates challenging the very same G.O. was tagged along with W.P.No.36731 of 2006, we decided to examine the correctness of the impugned G.O. and heard the learned counsel appearing for the parties.

5. The brief facts which are required to be stated are that on 1.7.2003, the Government servants working in the Secretariat as well as in the District Administration went on a strike en-masse. The State Government therefore passed orders dismissing the striking employees. Closely followed by that, the Government issued G.O.Ms.No.84, Personnel and Administrative Reforms (Per.G) Department, dated 4.7.2003 and decided to recruit temporary Assistants to attend to the work in the Departments of the Secretariat. Similarly, by G.O.Ms.No.85, Personnel and Administrative Reforms (Per.G) Department, dated 4.7.2003, the Government decided to recruit temporary Junior Assistants in various Districts. In the said G.O.Ms.No.84, the Commissioner of Employment and Training, Chennai was asked to send a list of eligible candidates to fill up 1000 supernumerary posts and ensure that the candidates are selected and put in position by 7.7.2003 insofar as the State Secretariat was concerned. In the G.O.Ms.No.85, similar such direction was issued to give suitable instructions to all the District Employment Exchanges to send a list of eligible candidates possessing necessary qualification by creating 500 temporary supernumerary posts of Junior Assistants in each District in order to ensure that such candidates are employed on a temporary basis and put in position from 7.7.2003 onwards.

6. Subsequently, the issue relating to the dismissal of the striking employees came to be considered by the Supreme Court in Civil Appeal Nos.5556 of 2006, etc., dated 6.8.2003 (reported in 2003 (6) SCC 581 - T.K.Rangarajan vs. Govt. of T.N). In the said Civil Appeal, learned counsel appearing for the State after getting necessary instructions, stated before the Court that the State Government came forward to reinstate all the Government employees who were dismissed because they had gone on strike except 2,200 employees who had been arrested and the employees against whom F.I.R. had been lodged. Subsequently, all the Government services were reinstated in service.

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7. Thereafter, in G.O.Ms.No.425, Personnel and Administrative Reforms (G) Departament, dated 4.12.2003, 506 temporary Assistants appointed on contract basis pursuant to G.O.Ms.No.84, dated 4.7.2003, were transferred to work as Supervisors (Graduates) in retail outlets of TASMAC at Chennai. Thereafter, by G.O.Ms.No.263, Personnel and Administrative Reforms (G) Department, dated 21.6.2004, the State Government passed orders terminating all the Junior Assistants appointed on contract basis in the Districts with immediate effect. However, by subsequent G.O. in G.O.Ms.NO.290, Personnel and Administrative Reforms (G) Department, dated 23.6.2004, the earlier Government Order in G.O.Ms.No.263, dated 21.6.2004, was cancelled.

8. It is in the above said background, the present impugned G.O.Ms.No.155, dated 19.9.2006 came to be issued, wherein, the State Government has decided to conduct a Special Competitive Examination in Group IV Standard for those temporarily recruited Assistants in the Secretariat and Junior Assistants in the various Districts in supernumerary posts for the purpose of their absorption in service. Similarly, in G.O.Ms.No.163, Personnel and Administrative Reforms (P) Department, dated 22.9.2006, the temporary employees who were transferred to TASMAC were also permitted to appear for the Special Competitive Examination to be conducted by the TNPSC. It is stated that the total number of posts in Group 'C' as on date is 7,702, while the total number of temporary employees who came to be appointed pursuant to G.O.Ms.Nos.84 and 85, dated 4.7.2003, is 11,356.

9. The contentions raised on behalf of the petitioners are that the posts of Junior Assistant/Assistant are Group 'C' posts, which are governed by the Rules framed under Article 309 of the Constitution and the State Government cannot attempt to restrict the scope of selection to a few selected individuals, as that would be violative of Articles 14 and 16 of the Constitution. By referring to Rule 11(2) of the Tamil Nadu State and Subordinate Services Rules, it was contended that those temporary employees who came to be appointed under the said Rule, cannot be given any preferential treatment, inasmuch as the said Rule would act as a statutory bar.

10. It was also contended that since the selection of the temporary employees pursuant to G.O.Ms.Nos.84 and 85, dated 4.7.2003, came to be made within a short span of three or four days' time, there would not have been a proper selection and the chance was not thrown open to all the available eligible candidates while making such appointment. It was therefore contended that the present attempt to restrict the scope of selection from among those temporary employees alone would deprive all the valuable rights of the petitioners in W.P.No.43636 of 2006 and similar such eligible candidates who aspire for such service in the State.

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11. Heavy reliance was placed upon the Constitution Bench decision of the Supreme Court reported in 2006 (4) SCC 1 (Secy. State of Karnataka vs. Umadevi(3)) to contend that the Supreme Court has deprecated the practice of regularisation of illegal appointment to the State service.

12. It was also contended that by virtue of Article 320(3) of the Constitution, since it is within the realm of the State Public Service Commission as regards the matters relating to the services of the State, there is a Constitutional bar for the State Government to resort to such restricted recruitment.

13. By referring to Article 13(2) of the Constitution, it was contended that any law made by the State Government which either takes away or abridges the rights conferred under Part-III of the Constitution, should be held to be void to the extent of such contravention. It was also contended that while resorting to such restricted recruitment, the rule of reservation is also not followed.

14. As against the above submissions, Mr.N.G.R.Prasad, Ms.Vaigai, Mr.Ajay Ghose for Mr.Hariparanthaman, Mr.Thiruneelakandan and Mr.Ayyathurai, learned counsel appearing for the respective contesting respondents, namely the various Associations representing the temporary employees, contended that even as per the Supreme Court in Umadevi's case (2006 (4) SCC 1), what is deprecated is only regularisation of illegal appointment and that the said decision will have no application to the case on hand as the appointments were made in accordance with the Rules governing the services of the Tamil Nadu State and Subordinate employees.

15. Ms.Vaigai, learned counsel in her submissions stated that the controversy raised in these Writ Petitions would centre around the question as to whether the Government's action can be held to be in accordance with the Rules and whether such action can be held to be constitutionally valid. By referring to Rules 2(14), 2(15) and 2(18), 11 and 48 of the Tamil Nadu State and Subordinate Services Rules, it was contended that in the present case, the appointment of temporary employees at the initial stage was made in accordance with those Rules, that those Rules provide for resorting to a restricted selection to be made through the State Public Service Commission and that such action of the Government in treating the employees as a class by themselves for whom such restricted scope of selection, was permissible under law. Learned counsel therefore contended that when the initial appointment of the temporary employees was based on the assessment of factors that prevailed in an extraordinary situation which forced the State Government to resort to such appointment to ensure that the Government machinery function without any interruption, no fault can be found with the issuance of the impugned G.O.Ms.No.155, dated 19.9.2006 and G.O.Ms.No.163, dated 22.9.2006, for holding a Special Competitive Examination in order to absorb such of those temporary employees as Assistants/Junior Assistants in the regular service.

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16. Reliance was also placed on the proviso to Article 320(3) of the Constitution which empowered the State Government to deviate from the normal rule of consulting the Public Service Commission while resorting to such selection. Learned counsel also referred to the TNPSC Regulations, in particular, Regulation 16(b), which again enables the State Government to resort to any recruitment without consulting the State Service Commission.

17. Learned counsel also relied upon the decisions of the Supreme Court reported in 1982 (3) SCC 341 (I.J.Divakar vs. Govt. of A.P) and 1984 (4) SCC 251 (Prabodh Verma vs. State of U.P) and contended that in the light of the above referred to decisions of the Supreme Court which has recognised the power of the State Government to regularise the services of such employees who form a class by themselves, it would fall within the exceptional categories set out in the recent Constitution Bench decision of the Supreme Court reported in 2006 (4) SCC 1 (Umadevi's case). According to the learned counsel, the effect of law stated by the Supreme Court in paragraph 54 of Umadevi's case will not apply to the said earlier decisions of the Supreme Court reported in 1982 (3) SCC 341 and 1984 (4) SCC 251. Reliance was also placed upon the decision of the Supreme Court reported in 1997 (10) SCC 298 (Sandeep Kumar Sharma vs. State of Punjab). Learned counsel therefore contended that since the State Government has necessary powers for ordering a Special Competitive Examination for the temporary employees under the Rules, there is no scope to hold that there is any violation of Article 14 or Article 16 of the Constitution.

18. Mr.Ajay Ghose, learned counsel representing learned counsel Mr.Hariparanthaman, by relying upon paragraph 31 of the Umadevi's case (2006 (4) SCC 1), where the earlier decision of the Supreme Court reported in 1997 (2) SCC 1 (Ashwani Kumar vs. State of Bihar) has been referred to, contended that since the initial entry of the temporary employees did not suffer from any flaw in the procedural exercise, the subsequent regularisation by resorting to a Special Competitive Examination through the State Public Service Commission cannot be found fault with. Reliance was also placed upon the unreported order of a Division Bench of this Court in W.P.No.8490 of 1999, dated 8.2.2007.

19. Mr.Ayyathurai, learned counsel appearing for certain other contesting respondents, contended that there was no unfairness pointed out by the petitioners in order to countenance their challenge. Learned counsel referred to Rule 5 of the TNPSC Rules of Procedure and contended that the TNPSC itself has been empowered to adopt a special procedure in any particular case or class of cases to deviate from the normal rule. According to the learned counsel, the temporary employees formed a class by themselves and therefore, such a procedure which is now sought to be adopted by the State Government, is perfectly valid.

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20. Mr.Thiruneelakandan, learned counsel appearing for the other contesting respondent, contended that the temporary employees were all qualified persons, that the recruitment was based on the seniority maintained in the Employment Exchange, that since there was a ban on recruitment earlier, there were large number of vacancies at the point of time when the temporary employees were recruited and their long standing grievance for absorption which is now being effected by resorting to a Special Competitive Examination, that too, through the TNPSC, cannot be faulted.

21. Mr.M.Dhandapani, learned Special Government Pleader appearing on behalf of the State, submitted that the temporary employees were appointed by invoking Rule 11 of the Tamil Nadu State and Subordinate Services Rules, that they were not in the services of the State, that for them, the Special Rules providing for the method of recruitment will have no application and that in the light of Rule 48 of the Tamil Nadu State and Subordinate Services Rules, as well as proviso to Article 320(3) of the Constitution, read along with the TNPSC Regulations and the TNPSC Rules of Procedure, the recruitment by way of Special Competitive Examination to be conducted by the TNPSC is resorted to as per the Rules, and therefore, such recruitment for the purpose of absorption of such of those successful temporary employees, cannot be held to be illegal. The learned Special Government Pleader, by referring to the counter affidavit filed on behalf of the State, pointed out that there are 11,356 contract employees who are working temporarily on a consolidated pay of Rs.4,000/- p.m., that they came to be appointed at a time when the State Government faced a crisis due to the en-masse strike of the State Government employees and therefore, the State Government thought it fit to treat them as a class by themselves by resorting to a special recruitment under the impugned G.O.

22. The learned Special Government Pleader also submitted that such special recruitment is not uncommon, that earlier in the year 1977, 1984, 1989 and 1997, such recruitment was made for regularisation of similar such employees employed on consolidated pay by holding Special Qualifying Examination. The learned Special Government Pleader contended that what is prohibited in the Constitution Bench judgment of the Supreme Court in Umadevi's case (2006 (4) SCC 1), is only illegal appointment, namely employees who enter the service through back-door entry, whose employment cannot be regularised by way of absorption and since the employment of the temporary employees in the present case was in accordance with the Rules, and when the State Government, as a policy decision, in the interest of the administration as well as in the interest of such temporary employees, decided to resort to recruitment by way of Special Competitive Examination through the TNPSC, the said action of the State Government should not be interfered with.

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23. Having heard learned counsel for the petitioners, learned Special Government Pleader and the learned counsel for the contesting respondents, at the outset, we hold that the Writ Petition in W.P.No.36731 of 2006 by way of a PIL, is not maintainable in law, as the same is directly hit by the decisions of the Supreme Court reported in 1998 (7) SCC 273 (cited supra) and 2005 (1) SCC 590 (cited supra). We would have been well justified in imposing exemplary costs on the petitioner in W.P.No.36731 of 2006, but for the fact that in the connected Writ Petition in W.P.No.43636 of 2006 preferred by the aggrieved unemployed graduates, we thought it fit to examine the challenge made to the impugned G.O. in the light of the decision of the Supreme Court in Umadevi's case (2006 (4) SCC 1) and the earlier decisions of the Supreme Court reported in 1982 (3) SCC 341 (cited supra) and 1984 (4) SCC 251 (cited supra). Therefore, we merely hold that the said Writ Petition in W.P.No.36731 of 2006 is liable to be dismissed in-limine.

24. When we consider the issue involved as raised in the challenge made to the impugned G.O. in W.P.No.43626 of 2006, we wish to refer to the ratio decided in Umadevi's case (2006 (4) SCC 1) as well as the earlier decisions of the Supreme Court reported in 1982 (3) SCC 341 (Divakar's case) and 1984 (4) SCC 251 (Prabodh Verma's case). We find that the statement of law set out in the earlier two decisions (Divakar and Prabodh Verma cases) required to be stated for more than one reason. In the first instance, these two earlier decisions were not brought to the notice of the Supreme Court in Umadevi's case. We are of the considered opinion that the ratio-decidendi in the above referred to earlier decisions carve out an exception, which exception has been broadly set out in Umadevi's case and therefore, it will be worthwhile to refer to those decisions in the foremost before ever our conclusions are set forth in the case on hand.

25. The facts involved in Divakar's case (1982 (3) SCC 341) briefly stated are that the Andhra Pradesh Public Service Commission invited applications for the post of Junior Engineers in the Andhra Pradesh Engineering Service and other allied services in the year 1977. As many as 4,000 applications were received and all eligible candidates were asked to appear for a viva-voce test and after the conclusion of the viva-voce test, the State Commission was in the process of finalising the select list. At that point of time, the Government of Andhra Pradesh issued two Government Orders in exercise of powers vested with it under Article 320 of the Constitution, by which it excluded from the purview of the Commission all appointments made by direct recruitment to any post in any category at all levels in the State and Subordinate Services, which were continuing temporarily as on particular date. By the second G.O., the State Government regularised the services of all temporary Government servants who were appointed by direct recruitment and who were continuing in service as on the date of the issuance of the Government Order without subjecting to any test, written or oral, subject of course to certain conditions to be specified as per the G.O. The Supreme

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Court certified that such a power of the State Government did flow from the proviso to Clause 3 of Article 320 of the Constitution. The contention raised while attacking the G.Os. issued by the State Government, namely that advertisement was already made by the Commission and that it was in the process of selection and therefore, at that stage, the power under the proviso to Clause 3 of Article 320 cannot be issued, was negatived by the Supreme Court. As far as the contention, namely that the recruitment of the temporary employees for the post of Junior Engineers was within the powers of the State Commission and therefore, such initial recruitment as on a temporary basis itself was contrary to the statutory provision in order to hold that the subsequent absorption was not legal, the Supreme Court went on to hold that the power of the State Government for making temporary appointments without the intervention of the Commission, cannot be disputed, and that such temporary employees did possess necessary qualification, and therefore, when the Government thought it fit in the light of the exigencies to regularise their services for peace and harmony in services, such regularisation has to be held to be in accordance with the Rules.

26. In Prabhodh Verma's case (1984 (4) SCC 251), we find that the facts are more or less identical to the one involved in the case on hand. That was a case which arose in the State of Uttar Pradesh. In the year 1977, out of 80,000 Selection Grade Teachers of recognised institutions and institutions manned by the local bodies, 60,000 of them were members of a particular Sangh. 90% of the teachers in the recognised institutions went on an indefinite strike from 2.12.1977. In the light of the fact that the service in an educational institution had been defined as "essential service" under the Uttar Pradesh Essential Services Maintenance Act, the State Government issued a notification under Section 3(1) of that Act prohibiting the strikes in service in educational institutions by way of an Ordinance, while simultaneously by way of an amendment to Section 4 of the said Act, the State Government was empowered to terminate the services of such teachers if they fail to resume duty and also to make appointments on temporary basis of any person possessing the requisite qualifications for discharging their duties for the purpose of any such teacher. The Writ Petitions came to be filed by the striking teachers and in that process, 2,257 teaching posts came to be filled up by resorting to temporary appointments, by appointing persons who possess the requisite qualifications. Subsequently, after a settlement was reached with the permanent teachers, the temporary appointees numbering 2,257, were terminated. Subsequently, by way of an Ordinance to provide for absorption of certain teachers in the institutions recognised under the Education Act, such displaced temporary teachers were preferentially to be appointed in the substantive vacancies. When such substantive vacancies were filled up from among the reserve pool of erstwhile temporary appointees, some of the applicants who were not in the reserve pool, challenged their selection. In fact, the subsequent Ordinance providing for filling up of substantive vacancies from among the reserve pool created by the erstwhile

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temporary appointees, also made it lawful for the State Government to prohibit by notification in the Official Gazette the selection or appointment of any teacher in a recognised institution until the list of reserve pool of teachers of that District was exhausted and it further provided that where the Management failed to offer any post to a teacher in the reserve pool in accordance with the provisions of the Ordinance within the time specified by the Inspector, the Inspector could himself issue a letter of appointment to such teacher and the teacher concerned was entitled to get the salary from the date of such appointment. The challenge was made to the Ordinance itself by the Sangh representing the regular teachers who were in service. The High Court held that the Ordinance was constitutionally invalid and also proceeded to quash the subsequent proceedings to make the appointments from the reserve pool of teachers. In fact, in the proceedings filed before the High Court at Allahabad, none of the reserve pool teachers either individually or in a representative capacity were impleaded as party-respondents. The Supreme Court entertained the Special Leave Petitions preferred by the reserve pool teachers whose Writ Petitions were also dismissed by the High Court. The Supreme Court before going into the merits of the issues involved, at the outset, held that the Writ Petition filed by the Sangh representing the permanent teachers suffered from two serious defects, namely the non-joinder of necessary parties who were vitally concerned, namely the reserve pool teachers who were not even made parties in a representative capacity considering that their number was too large and that the Writ of Certiorari to quash the Ordinance was not maintainable. On the first defect pointed out, the Supreme Court in its ultimate conclusion, emphasised that for non-joinder of necessary parties, the Writ petition was liable to be dismissed. As regards the merits, the Supreme Court held that reserve pool teachers formed a separate and distinct class from other applicants from the post of teachers in recognised institutions for certain stated reasons and that the preferential treatment in the matter of recruitment was not discriminatory offending Article 14 of the Constitution and since the reserve pool teachers and the general applicants were not similarly circumstanced, there is no question of equality of opportunity in matters relating to employment guaranteed under Article 16(1) of the Constitution. Ultimately, the Supreme Court set aside the termination of services of reserve pool teachers as directed by the High Court and directed the State Government to restore their appointments.

27. Both in Divakar's case as well as in Prabodh Verma's case, the Supreme Court has noted that persons came to be employed de-hors the normal rule of recruitment while such employment was also resorted to, to meet certain emergent exigencies by following the relevant Rule for making such temporary appointments or by passing necessary amendments to the statute in order to ensure that such temporary appointments are legally sustainable. Therefore, the Supreme Court was pleased to assert that such valid temporary appointees cannot be thrown overboard on the specious ground that such temporary appointments came to be made de-hors

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the normal rule of recruitment. In other words, the Supreme Court made it clear that though at the time of making such temporary appointments, the normal rule of recruitment was not followed, none the less, such appointments were lawful and valid. In the light of the said conclusion as regards such temporary appointees, the Supreme Court went on to hold that their ultimate regularisation or absorption after a period of time by the State Government cannot be faulted.

28. In the light of the above ruling of the Supreme Court, when Umadevi's case is examined, the facts involved therein disclose that in one set of cases, there was a direction by the Division Bench of the High Court to the State Government to consider regularisation of temporary employees who had worked for more than ten years and also holding that they are entitled for 'equal pay for equal work' from the very inception of their engagement on daily wages. In another set of cases, the order of the State Government directing cancellation of appointments of all casual workers/daily rated workers made after 1.7.1984, which was under challenge before the High Court and while challenging the cancellation of appointments, direction was also sought for their regularisation. While the learned single Judge granted permission to the petitioners before him to approach their employers for absorption and regularisation and also for payment of their salaries on par with the regular workers by fixing time limit for making necessary representation, while directing the employers to consider such representations in accordance with the observations of the Supreme Court in similar cases. On appeal by the State Government, the Division Bench of the High Court allowed the appeals holding that such employees were not entitled for the benefit of the scheme of absorption framed by the Supreme Court in the decision reported in 1990 (2) SCC 396 (Dharwad District PWD Literate Daily Wage Employees Assn. vs. State of Karnataka). While considering the above issues, the Constitution Bench of the Supreme Court at the threshold kept in mind the distinction between the regularisation and conferment of permanence in service jurisprudence. It made a specific reference to two earlier cases of the Supreme Court in State of Mysore vs. S.V.Narayanappa (1967 (1) SCR 128) and R.N.Nanjundappa vs. Thimmiah (1972 (1) SCC 409), where the question of regularisation came up for discussion. The Supreme Court was pleased to extract the law stated in the case of Nanjundappa as stated in paragraph 26, which is to the following effect:

> "Counsel on behalf of the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas counsel on behalf of the State contended that regularisation did not mean permanence but that it was a case of regularisation of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or

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> regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."
>
> (underlining is ours)

29. After making a specific reference to the above extract of the earlier decision of the Supreme Court, the Constitution Bench went on to state in paragraph 16 to the effect that in B.N.Nagarajana vs. State of Karnataka (1979 (4) SCC 507), the Supreme Court has already held in clear terms that the words "regular" or "regularisation" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments and stated that they are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. The Constitution Bench also stated that those decisions and the principles recognised therein were never dissented to by the Supreme Court and that on principle, the Constitution Bench also expressed that they see no reason not to accept the proposition as enunciated in the said decisions. Ultimately, the Constitution Bench of the Supreme Court stated the legal position to the following effect in paragraph 16:

> "16. ..... We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation."

30. The Constitution Bench also held that the constitutional scheme of public employment in this country vis-a-vis the right to regularise an appointment after following the due procedure, even though a non-functional element of that process or procedure has not been followed, is vested with the Executive and for that matter, with the Court in appropriate cases.

31. After considering the above basic principles which are to be kept in mind while considering any case of temporary employees/daily wage employees for regularisation, the Constitution Bench of the Supreme Court opined that in the decision reported in 1988 (1) SCC 122 (Daily Rated Casual Labour vs. Union of India), the Supreme Court itself directed the Government to frame a scheme for absorption of daily rated casual labourers who were continuously working in the Posts and

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Telegraphs Department for more than one year. The Constitution Bench of the Supreme Court also stated that similar approach was made in the decision reported in 1990 (1) SCC 361 (Bhagwati Prasad vs. Delhi State Mineral Development Corpn.), where also, the Supreme Court directed regularisation of daily rated workers in phases and in accordance with seniority.

32. While commenting upon the decision in Dharwad District P.W.D. Literate Daily Wage Employees Association case (1990 (2) SCC 396), the Constitution Bench of the Supreme Court stated that the distinction emphasised in Nanjundappa's case (1972 (1) SCC 409) was omitted to be kept in mind, instead, while dealing with a scheme for "equal pay for equal work" without an actual discussion of the question, the Supreme Court approved the scheme prepared by the State at the direction of the Court to order permanent absorption of daily rated workers. By saying so, the Constitution Bench of the Supreme Court held that the decision in Dharward District PWD Literate Daily Wage Employees Association case, cannot be said to have laid down any law. The Constitution Bench of the Supreme Court has stated the same as under in paragraph 22:

> "22. ... With respect to the learned judges, the decision cannot be said to lay down any law, that all those engaged on daily wages, casually, temporarily, or when no sanctioned post or vacancy existed and without following the rules of selection, should be absorbed or made permanent though not at a stretch, but gradually. If that were the ratio, with respect, we have to disagree with it."

33. While referring to the subsequent decision of the Supreme Court reported in 2004 (7) SCC 112 (A.Umarani vs. Registrar, Coop. Societies), the Constitution Bench of the Supreme Court noted that in the said decision, the Supreme Court, after making a survey of the authorities, held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointments would be illegal and cannot be regularised by the State, even by invoking Article 162 of the Constitution. In the opinion of the Supreme Court, regularisation cannot be a mode of recruitment by any State falling under Article 12 of the Constitution. The Constitution Bench re-emphasised the legal position in paragraph 43 in the following words:

> "43. .... Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee

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could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. ..."

34. Again in paragraph 49, the Constitution Bench of the Supreme Court has declared that when the Court is approached for relief by way of a Writ, the Court has necessarily to ask itself whether the person before it had any legal right to be enforced. Ultimately, the Constitution Bench of the Supreme Court also made a clarification as under in paragraph 53:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa (State of Mysore v. S.V.Narayanappa, 1967 (1) SCR 128 : AIR 1967 SC 1071), R.N.Nanjundappa (R.N.Nanjunappa v. T.Thimmiah, 1972 (1) SCC 409 : 1972 (2) SCR 799) and B.N.Nagarajan (B.N.Nagarajan v. State of Karnataka, 1979 (4) SCC 507 : 1980 SCC (L&S) 4 : 1979 (3) SCR 937) and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional

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requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

35. Thereafter, in paragraph 54, the Constitution Bench further clarified as to the earlier decisions, in the following words:

"54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

36. It is in the light of the above stated legal position set down by the Constitution Bench of the Supreme Court, the case on hand will have to be analysed. While making such an analysis, we find that in G.O.Ms.Nos.84 and 85, while resorting to employment of temporary hands to an extent of 500 persons in every District and 1,000 persons in the State Secretariat, the State created such required number of supernumerary posts of Junior Assistants in the District level and the post of Assistants at the Secretariat. The State also issued specific direction to the Commissioner of Employment and Training to give suitable instructions to the Employment Exchanges to send a list of eligible candidates possessing minimum general educational qualifications who have registered in the respective Employment Exchanges. The rule of reservation was directed to be followed, as stated under General Rule 22 of the Tamil Nadu State and Subordinate Services Rules. Thereafter, the District Collectors were directed to give wide publicity intimating the employment registration numbers of such candidates, the date and venue of interview and other details through the Press Media and other communication channels. As the necessity for such temporary employment was under an imminent emergent situation, the District Collectors were also directed to ensure that the candidates selected are put in position from 7.7.2003 onwards. Necessary advertisements were also made in the daily newspapers. Necessary intimation letters to the selected candidates were also issued and one such letter placed before the Court discloses that such a communication was sent even on 22.8.2003. A contract reflecting the terms of such temporary appointment, got signed by the concerned employee, which of course mentioned that no preferential claim to any other post or any other service in the Government would be entertained. Such appointments on temporary basis was allowed to continue even after the strike was withdrawn by the regular employees and all of them resumed their duties at the intervention of the Supreme Court. Though by G.O.Ms.No.263, dated 21.6.2004, the State Government wanted to terminate the services of the temporary appointees, by yet another G.O. in G.O.Ms.No.290, dated 23.6.2004, the earlier G.O.Ms.No.263, dated 21.6.2004 was cancelled. Thus, the temporary employees who came to be appointed right from July 2003 were continued in service in supernumerary posts and are working as such till this date.

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37. It is also to be kept in mind that their services came to be availed when the State machinery was facing a piquant situation in which the entire State Government employees had withdrawn their services by resorting to an indefinite strike by pressing for acceptance of their charter of demands. The State Government's persuasion for withdrawal of the strike and restoration of working, was not heeded to by the employees. Therefore, in order to avoid paralyse of work of the entire State machinery, the State Government resorted to engagement of temporary hands on an emergent basis. It will have to be stated that those temporary employees who came forward to accept such engagement, did face enormous risk, as they had to earn the wrath of the striking Government employees. Further, the engagement of such temporary hands had to be made on a war-footing, as the State Government cannot be expected to apply the regular recruitment process by giving usual time gap while making such appointments. The appointments were all made by invoking Rule 11 of the Tamil Nadu State and Subordinate Services Rules.

38. All the above factors disclose that the employment of temporary appointees was validly made by following the relevant Rules and Regulations. The present set of employment of temporary hands cannot be equated with unmindful engagement of casuals or daily wagers at the whims and fancies of different authorities at different points of time. When such is the nature of induction of these temporary employees to man an emergent situation which prevailed in June-July 2003 (i.e) at the time when the State Government was forced to resort to such temporary hands in order to ensure that the State machinery in its functions, did not fail, it will have to be held that such temporary employees are a class by themselves and the treatment of such employees of their future continuance as is now being resorted to by the impugned G.O., has to be examined differently.

39. In our opinion, the facts involved in the case on hand fits in to a very large extent to the facts involved in Prabodh Verma's case (1984 (4) SCC 251). As compared to the reserve pool teachers numbering 2,257 in the Prabodh Verma's case, in the case on hand, the temporary employees are in the order of 11,356. While in the case on hand, the respondent-State has now attempted for absorption by resorting to a Special Competitive Examination through the TNPSC, in Prabodh Verma's case, an Ordinance was passed to provide for absorption by creating a reserve pool of such temporarily employed teachers numbering 2,257. The Supreme Court in Prabodh Verma's case, noted that the reserve pool teachers who possessed the requisite qualifications, formed a separate and distinct class by reason of the service they had rendered to the State in general, and to the educational system in Uttar Pradesh, in particular, in difficult circumstances, and therefore, they were more suited to be appointed to the post which had fallen vacant in recognised institutions and which were to be filled by direct recruitment than those who had not rendered such

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service. While dealing with Articles 14 and 16 of the Constitution, the Supreme Court has made it clear that the Government being the largest employer in the country and employment or appointment to an office under it is a valuable right possessed by citizens, but yet, Article 14 of the Constitution does not forbid classification. The Supreme Court has stated the legal position in the following words in paragraph 40 in Prabodh Verma's case:

> "40. .... The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the territory of India irrespective of differences of circumstances. It only means that all persons similarly circumstanced should be treated alike and there should be no discrimination between one persons and another if as regards the subject-matter of the legislation, their position is substantially the same. By the process of classification, the State has the power to determine who should be regarded as a class for the purposes of legislation and in relation to a law enacted on a particular subject. The classification to be valid, however, must not be arbitrary but must be rational. It must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable nexus or relation to the object of the legislation. In order to pass the test, two conditions have to be fulfilled, namely,: (1) that the classification must be founded on an intelligible differentia which distinguishes those that are are grouped together from others, and (2) the differentia must have a rational nexus or relation to the object sought to be achieved by the legislation (see In re The Special Courts Bill, 1978 ---- 1979 (2) SCR 476, 535 : 1979 (1) SCC 380, 425 : AIR 1979 SC 478)"

40. The Supreme Court in the Prabodh Verma's case, tested the Ordinance in the light of the above principles. While applying the first test, the Supreme Court has taken note of the following factors as stated in paragraph 42:

> "42. The first question which, therefore, arises is "Whether there is any intelligible differentia which distinguishes teachers put in the reserve pool by Ordinance 22 of 1978 from other applicants for posts of teachers in recognized institutions?" The reserve pool teachers were those who had come forward at a time when the teachers employed or

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a large majority of such teachers, in the recognized institutions, had gone on an indefinite strike and had continued the strike even after it had been declared illegal. Had the strike continued almost all the recognized institutions in the State would have had to close down putting the students to great hardship and suffering and causing a break in their education. It was in these difficult and trying times that the reserve pool teachers came forward to man the recognized institutions. Presumably, it was this that brought about a settlement of the strike. It must be borne in mind that the reserve pool teachers joined the recognized institutions during the period of the strike in circumstances in which they exposed themselves to great hostility from the striking teachers. They, therefore, did so running a certain amount of risk for there is always a possibility of a strike turning violent. Yet another hazard they faced was that, were some of the reserve pool teachers to apply later for the posts of teachers in a recognized institution which had fallen vacant and were to be selected under Section 16-E of the Intermediate Education Act, they would have had to work together with those teachers who had gone on strike and had been taken back and they would then have to face their hostility. The assumption made by the High Court that the appointment of reserve pool teachers to the vacancies which had occurred blocked the chances of promotion of those working in the Licentiate Teachers' Grade was factually not correct. .... There was thus no question of a vacancy to be filled by promotion being filled by any teacher in the reserve pool or of such reserve pool teachers blocking the chances of promotion of other teachers working in the Licentiate Teachers' Grade in recognized institutions. The reserve pool teachers were originally appointed during the period of the strike under U.P. Ordinance 25 of 1977 and it should be borne in mind that this Ordinance expressly required appointment of persons possessing requisite qualifications. All the reserve pool teachers thus possessed the requisite qualifications and this fact is not disputed before us. ..... Almost all who applied for these posts and were not in the reserve pool must have been qualified to be appointed to posts in recognized institutions during the pendency of the strike. None of these applicants, however, came forward to join a recognized institution during that period as

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the reserve pool teachers did. The other applicants for the posts of teachers, therefore, stood in a different class from the reserve pool teachers and it would be wrong to equate these two classes together as forming just one class."

41. While addressing the second question, the Supreme Court in Prabodh Verma's case, has held as under in paragraph 43:

"43. ..... The object of that Act as shown by its Preamble and different provisions is to ensure that educational institutions managed and conducted by private management are staffed and run properly. To provide therefore that those who had already shown their concern for the maintenance and continuity of the educational system in the State should receive a preferential treatment in recruitment over those who had not shown such concern cannot be said to be foreign to the object of the legislation. If the State were not to appreciate in a concrete form the services of those who came to its aid in an emergency, the result would be that in a future crisis nobody would be willing to come forward to render similar assistance to the State. If, when faced with difficulties in maintaining a service, and particularly an essential service, the State wants to overcome those difficulties and to ensure that a similar situation does not arise in the future, it is open to the State to do so by motivating people to come forward and render aid to the State by making them feel that if they do so, they would receive a reward. Such motivation would be brought about by rewarding those who have rendered such services in the past. Giving a preferential right in recruitment would be both a reward for past services of this kind and an incentive to others to come forward and render similar assistance to the State in the future. It cannot, therefore, be said that the action of the State in giving a reward which would at the same time be an incentive to others has no rational basis with the objective sought to be achieved by the concerned legislation. In fact the employment of such persons by giving them preference in recruitment would be conducive to the maintenance and smooth functioning of an essential service in the future. ...."

42. The Supreme Court in the Prabodh Verma's case therefore held that the reserve pool teachers formed a separate and distinct class from other applicants for the post of teachers in recognised institutions. Similarly, in the case on hand, the temporary employees who staked their claim at the point of crisis, where the entire State Government employees had gone on strike, it

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will have to be held that they did take a very grave risk when they came forward to accept temporary employment with a consolidated pay, which put them all in a grave risk, as they had to earn the displeasure of the striking force, which would have caused any amount of mental stress at that point of time. That apart, by accepting such temporary employment, they had assisted the State to run its machinery without any disruption and thereby provided a smooth administration which was in public interest. Therefore, here also, the case of the temporary employees has not only to be held to be a class by themselves, distinguishing from the other persons and such status of the temporary employees had a nexus and relation to the object that was sought to be achieved in the present juncture when their absorption is resorted to by permitting them to undergo a Special Competitive Examination, that too by the State employment machinery, namely the TNPSC. It cannot be held that the present attempt of the State Government in resorting to the holding of a Special Competitive Examination for the temporary employees for filling up of the posts of 7,702 from amongst 11,356 persons, was in violation of Articles 14 and 16 of the Constitution or for that matter, any of the statutory Rules or Regulations.

43. Rule 48 of the Tamil Nadu State and Subordinate Services Rules reads as under:

> "Notwithstanding anything contained in these rules or in the special rules, the Governor shall have power to deal with the case of any person or class of persons serving in a civil capacity under the Government of Tamil Nadu or of any person who has or of any class of persons who have served as aforesaid or any candidate or class of candidates for appointment to a service in such manner as may appear to him to be just and equitable:
>
> Provided that, where any such rule is applicable to the case of any person or class of persons, the case shall not be dealt with in any manner less favourable to him or them than that provided by that rule."

44. Rule 2(14) of the Tamil Nadu State and Subordinate Services Rules defines what is "recruited direct", which states that a candidate is said to be "recruited direct" to a service, class, category or post when, in case his first appointment thereto has to be made in consultation with the Commission, on the date of its notification inviting applications for the recruitment and in any other case, at the time of his first appointment thereto.

45. Rule 2(15) of the Tamil Nadu State and Subordinate Services Rules defines "recruited by transfer". Rule 2(18) of the Tamil Nadu State and Subordinate Services Rules defines "service", which means a group of persons classified by the State Government as a Subordinate or a State Service, as the case may be.

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46. Rule 11 of the Tamil Nadu State and Subordinate Services Rules deals with the enabling power of the State Government to provide appointments by agreements inconsistent with any of the Rules made under the proviso to Article 309 of the Constitution or continuing by Article 313 of the Constitution. Sub-Rule (2) to Rule 11 makes it clear that a person appointed under sub-rule (1) shall not be regarded as a member of the service in which post to which he is appointed is included and shall not be entitled for any preferential claim.

47. The proviso to Article 320(3) of the Constitution empowers the Governor of the State to make regulations specifying the matters in which either generally or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

48. A conjoint reading of the above provisions makes it clear that while the temporary employees formed a class by themselves, their employment as temporary hands cannot be regarded as either illegal or irregular in any respect. Inasmuch as they all came to be employed by invoking Rule 11 of the Tamil Nadu State and Subordinate Services Rules by resorting to a legal method of calling for sponsoring of candidates from the respective Employment Exchanges by duly adhering to the seniority in the registrations and after holding an interview, there was no element of any illegality or irregularity in their appointments as temporary hands. By virtue of the application of Rule 11(2) of the Tamil Nadu State and Subordinate Services Rules, since they were not born on the service of the State, it will have to be held that there is no question of application of Rule 2(15) of the Tamil Nadu State and Subordinate Services Rules, which defines "recruited by transfer". However, when the State Government by invoking the power vested in the Governor under the proviso to Article 320(3) of the Constitution, has come forward with the issuance of the impugned G.O. for holding a Special Competitive Examination through the TNPSC within the classified group of such temporary employees numbering 11,356 or there about, it can never be held that such a step resorted to by the State Government was in contravention of any of the statutory Rules or Regulations or for that matter, there was any infringement of the right to equality or discriminatory clause as enshrined under Articles 14 and 16 of the Constitution. As has been explained in the earlier paragraphs, such temporary employees, by virtue of their initial induction as temporary hands, were lawfully entitled for such a special treatment, as they have formed into a class by themselves distinguishing from other unemployed graduates like that of the petitioners in W.P.No.43626 of 2006. Moreover, by resorting to such Special Competitive Examination, the State Government has not also given a go-by to the rule of reservation, inasmuch as the said Rule was applied even while making the initial appointment as temporary hands, apart from giving a specific direction under the impugned G.O. that the rule of reservation would be strictly followed. The learned Special Government Pleader has also in his

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submissions confirmed that the petitioners need not have any apprehension that the rule of reservation will not be followed even while making the absorption under the impugned G.O.

49. In the light of our above conclusions, when we consider the submission of the petitioners that the appointment of temporary employees was irregular and therefore, the State cannot resort to their regularisation, the same is not substantiated. On the other hand, the appointment of temporary employees came to be regularly made after getting necessary sponsor from the respective Employment Exchanges based on their seniority in registration and after holding an interview. If the petitioners or any other person failed to avail the opportunity at the time of such temporary appointments, they are alone to be blamed and that cannot be permitted to be raised as a grievance at this point of time. The contention that rule of reservation was not followed at the time of initial temporary appointment, was also not true, inasmuch as in G.O.Ms.Nos.84 and 85, dated 4.7.2003, there was a specific direction by the State Government to follow the rule of reservation. Wide publicity was made in the newspapers also as regards the recruitment resorted to for temporary hands. All the above factors go to show that initial induction of the temporary employees was valid and proper.

50. As far as the contention based on Article 320(3) of the Constitution, the said provision was subject to the proviso contained in that Clause. The proviso to Article 320(3) of the Constitution empowers the State Government to resort to a recruitment without consulting the TNPSC at the time of exigencies. Therefore, when the Constitution itself provides for a special method of recruitment to be resorted to, the petitioners cannot be heard to say that such a step taken by the State Government as a policy decision, considering the nature of induction of the temporary employees at the time when their services were imminently required to get over the crisis and thereby treating them as a class by themselves, cannot be held to be one not permissible in law. As pointed out by Ms.Vaigai, learned counsel appearing for one of the contesting respondents, Rule 48 of the Tamil Nadu State and Subordinate Services Rules, itself enables the State Government to go in for such a special recruitment without reference to the TNPSC.

51. Therefore, the contention of the petitioners that the present attempt of the State Government providing for a Special Competitive Examination to be conducted for the temporary employees alone was contrary to the Rules, is under a total misconception. On the other hand, it will have to be held that such a methodology resorted to by the respondent-State under the impugned G.O. was permissible under the Rules as well as the proviso to Article 320(3) of the Constitution.

52. Since we have held that the temporary employees are a class by themselves, that there was no irregularity in their initial induction and that the present step taken by the respondent-State to absorb them by resorting to a Special Competitive Examination through the TNPSC, is also permissible in law, we do not find any illegality or irregularity in the said action of the respondent-State. Consequently, we also hold that

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there is no infirmity in the G.O. in these Writ Petitions in order to interfere with the same.

53. We have given our anxious consideration to the ruling of the Supreme Court in Umadevis' case (2006 (4) SCC 1) and have noted the facts involved in that case, wherein the appointments were irregular on the face of it and that such appointments de-hors the Rules, cannot be treated to be regularised either by the Tribunal or the Court, which has been deprecated by the Supreme Court in that case, which is not the case on hand. As far as the application of the decision of the Supreme Court in Umadevi's case (2006 (4) SCC 1), as held by us earlier, the case on hand in the light of its similarity to Divakar's case (1982 (3) SCC 341) and Prabodh Verma's case (1984 (4) SCC 251), comes within the excepted category set out by the Supreme Court in Umadevi's case (2006 (4) SCC 1), namely that there was no illegality or irregularity in the initial appointment of the temporary employees and that the Special Competitive Examination directed to be held is well within the permissible Rules as well as the Constitutional provisions and therefore, not hit by the general ratio-decidendi prohibiting regularisation of persons who enter through back-door as held in that case.

54. Having regard to our above conclusions, we also hold that there is no infringement of either Article 14 or Article 16 of the Constitution, as we do not find any discriminatory treatment meted out to the petitioners or similarly placed persons, inasmuch as the present temporary employees have been held to be a class by themselves and there is no scope for the petitioners to compare themselves with the temporary employees. We therefore hold that the impugned G.O. is valid in law and there is no case made out in both the Writ Petitions for interfering with the same.'

55. Both the Writ Petitions are dismissed. No costs. The Miscellaneous Petitions are closed.

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Asst.Registrar

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Sub Asst.Registrar

Copy to

1.
The Chief Secretary to Government,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 002.

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3.
The Chief Secretary,
Public and Administrative Department,
Fort St.George,
Chennai-600 009.

+2ccs to Mr. P.R. Thiruneelakandan, Advocate sr no. 33772
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+1cc to Mr. D. Hariparanthaman, Advocate sr no. 33750
+1cc to Ms. R. Vaigai, Advocate sr no. 33825
+1cc to Mr. M. Gnanasekar party in person sr no. 33819
+1cc to Mr. N. Subramaniyan, Advocate sr o. 33851
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jrg(Co)
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